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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,041

09/06/2006

Yukio Yanagisawa

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7055 7590 06/30/2008
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EXAMINER

GERIDO, DWAN A

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

06/30/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/597,041	Applicant(s) YANAGISAWA ET AL.	
	Examiner Dwan A. Gerido, Ph.D.	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9-10-2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 17-22, 32, and 33 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of copending Application No. 11/779,688. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims recite identical limitations of an identical device.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 17-20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attar (US 4,840,919).

7. With regards to claim 17, Attar teaches a gas dosimeter comprising a hollow casing with inner and outer surfaces (column 4 lines 29-41, 59-65), an adhesive layer for connecting the base and cover (column 4 lines 37-41), and a test specimen that changes color when exposed to amine vapors (column 4 lines 42-44). Attar does not teach placing the adhesive layer at the periphery of the opening. It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to modify Attar in a manner wherein the adhesive layer is placed at the periphery of the opening to gain the advantage of providing a barrier between the opening and the ambient environment in order to prevent contaminants from contacting the test specimen.

8. With regards to claim 18, Attar teaches the inner surface as being transparent (column 4 lines 65-68).

9. With regards to claim 19, Attar teaches the casing having a gas barrier property (column 4 lines 32-35, 59, and 60).

10. With regards to claims 20 and 25 Attar teaches the entire casing being impermeable to gas which is being read on the gas film formed to an inner and an outer surface (column 4 lines 32-35, 59, and 60).

11. With regards to claims 22, 28, and 29 Attar teaches an annular rib extending from the edge of the opening to inside the casing (figure 1 #14a).

12. With regards to claims 23, 30, and 31 Attar teaches an air permeable spacer between the opening and the test specimen (column 5 lines 3-10, figure 2 #24).

13. With regards to claim 32, Attar does not explicitly teach the adhesive configured to bond to an aluminum sheet. The MPEP states that “The selection of a known material based on its suitability for its intended use supported a prima facie obviousness” (see *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 1945). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Attar in a manner wherein the adhesive is configured to bond to an aluminum sheet.

14. Claims 21, 26, and 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Attar (US 4,840,919) in view of Hildenbrand et al., (US 4,824,640).

15. With regards to claim 21, 26, and 27 Attar teaches a gas dosimeter comprising a hollow casing with inner and outer surfaces (column 4 lines 29-41, 59-65), an adhesive layer for connecting the base and cover (column 4 lines 37-41), and a test specimen that changes color when exposed to amine vapors (column 4 lines 42-44). Attar does not teach the device comprising a water absorbent material. Hildenbrand et al., teach a transparent test strip comprising a water absorbent material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Attar in view of Hildenbrand et al., to gain the advantage of providing a water absorbent material in order to utilize reagents with high water solubility.

16. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Attar (US 4,840,919) in view of Phillips et al., (US 5,563,031).

17. With regards to claim 24, Attar teaches a gas dosimeter comprising a hollow casing with inner and outer surfaces (column 4 lines 29-41, 59-65), an adhesive layer for connecting the base and cover (column 4 lines 37-41), and a test specimen that changes color when exposed to amine vapors (column 4 lines 42-44). Attar does not teach the device comprising an optical measurement system. Phillips et al., teach a system for detecting analytes comprising a light shielding chamber with a setting stage (figure 4 #'s 15 and 60), a light source (column 8 line 44, figure 2 #5), an optical detector (column 8 line 44, figure 2 #6), and a microprocessor which reads on the calculation processor (column 8 lines 57-65, figure 2 #20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Attar in view of Phillips et al., to gain the advantage of determining concentration with an optical device in order to provide more precise measurements of analyte concentration in a sample.

18. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Attar (US 4,840,919) in view of Hammond (US 4,965,047).

19. With regards to claim 32, Attar teaches a gas dosimeter comprising a hollow casing with inner and outer surfaces (column 4 lines 29-41, 59-65), an adhesive layer for connecting the base and cover (column 4 lines 37-41), and a test specimen that changes color when exposed to amine vapors (column 4 lines 42-44). Attar does not teach the device with a flange formed at the periphery of the casing. Hammond teaches an analytical test strip with a flange at the periphery of the casing (column 2 lines 53-55, figure 2 #26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Attar in view of Hammond to gain the advantage of utilizing a flange in order to provide a surface for handling of the test strip on the peripheral edges.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwan A. Gerido, Ph.D. whose telephone number is (571)270-3714. The examiner can normally be reached on Monday - Friday, 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lyle A Alexander/
Primary Examiner, Art Unit 1797
DAG